Diese Website verwendet Cookies von Google, um Dienste anzubieten und den Traffic zu analysieren. Deine IP-Adresse und dein User-Agent werden zusammen mit Messwerten zur Leistung und Sicherheit für Google freigegeben. So können Nutzungsstatistiken generiert, Missbrauchsfälle erkannt und behoben und die Qualität des Dienstes gewährleistet werden.

WEITERE INFORMATIONEN OK

Tuesday, August 22, 2006

What was the Coalition Provisional Authority?

The Coalition Provisional Authority (CPA) governed Iraq between April 2003 and June 2004. Despite the governmental powers it wielded, its legal nature is "shrouded in ambiguity," according to federal district court Judge T.S. Ellis III. This Congressional Report concurs.

The issue made it to court due to a lawsuit against various CPA contractors. The issue was whether the CPA was a U.S. federal agency, and thus the CPA's contractors federal government contractors. Judge Ellis held that the plaintiffs could not prove that they were. (Incidentally, some of these contractors, such as Custer Battles LLC, are also interesting entities: private companies apparently wielding some governmental and military powers delegated from the CPA. But that will have to be a subject for another time. First we have to figure out what the authority was that CPA had to grant).

Was the CPA created by President Bush as a separate federal agency in a National Security Directive? Was it a division of the United States Department of Defense as the Department of Justice now argues? Was it a United Nations agency created pursuant to a U.N. Security Council directive? Was it as Paul Krugman calls it a "private fiefdom"? Was it a private contractor wielding today's version of the colonial franchise? Was it a government created by a secret charter? (Imagine if the U.S. Constitution was a state secret. I can't do it, but let's try). Or -- most likely of all -- was it simply an ad-hoc creation based on no good legal procedure whatsoever? According to Judge Ellis, "....there is no formal document – whether statute, United Nations Security Council resolution, or other organic document – that plainly establishes the CPA or provides for its formation." The Congressional report agrees: " Detailed information that explicitly and clearly identifies how CPA was established, by whom, and under what specific authority, is not readily available."

The CPA's direct predecessor in governing Iraq was the Office of Reconstruction and Humanitarian Assistance (ORHA). The ORHA is the product of the still-classified National Security Presidential Directive (NSPD) 24 in January 2003. Its first head, retired Lieutenant General Jay Garner, was apparently hired by the Secretary Defense. A news story stated that he would report to the commander of the U.S. Central Command, who was at the time General Tommy Franks. But Garner's position description stated:

> This Office [ORHA] is established at the direction of the President of the United States, and is located for administrative purposes under Boards, Commissions and Task Forces, Washington Headquarters Services. This Office is under the supervision of the Under Secretary of Defense for Policy.

Garner's tenure was short-lived as the OHRA was within two months replaced by the CPA:

Pages

- Home

About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

View my complete profile

> On May 13, 2003, the Secretary of Defense designated Ambassador Bremer as CPA Administrator. The first regulation issued by Ambassador Bremer, dated May 16, 2003, identified him as Administrator of CPA. The authority's Inspector General (IG) stated, in his initial report to Congress, that OHRA became CPA in May 2003. However, a March 2004 DOD IG report stated that the Deputy Secretary of Defense, in a June 16, 2003, memorandum, dissolved ORHA and shifted ORHA's functions, responsibilities, and legal obligations to CPA.

The senior officials of the CPA were various active and retired U.S. military officers, U.S. ambassadors, and a liason from the U.S. Agency for International Development (USAID).

NPSD 36 in May 2004 retroactively defined the CPA as a "temporary organization" under 5 U.S.C. § 3161. But it is still unknown under what "law or Executive order," if any, the CPA was established so as to qualify as a "temporary organization."

In a report to Congress the Office of Management and Budget stated the following:

> The Administrator of the Coalition Provisional Authority (CPA) reports to the President through the Secretary of Defense. He oversees, directs and coordinates all U.S. Government (USG) programs and activities in Iraq, except those under the command of the Commander, U.S. Central Command (CENTCOM)... The CPA is vested by the President with all executive, legislative and judicial authority [i.e. governmental power] necessary to achieve its objectives, exercised consistent with relevant U.N. Security Council resolutions, including [U.N. Security Council] Resolution 1483,32 and the laws and usages of war. The CPA Administrator has primary responsibility for exercising this authority.

"The CPA is vested by the President with all executive, legislative, and judicial authority..." sounds very much like the language of Britain's colonial charters. But it subsitutes "vest" for "grant" (I'm not sure what thelegal implication of that might be) and lacks anything like the very redeeming feature of the American colonial charters that reserved rights to their "English liberties" for the residents of the granted area -- one of the main origins of the United States' Bill of Rights. Only the "laws and usages of war" seem to have restricted the CPA under the charter language reported here. This is more like the charter of the Royal Guinea Company that granted said corporation martial law power so that the company would have a free hand to defend its taking of slaves. To be fair, the United States was fighting a war, and the CPA unlike the Guinea Company was temporary and not, as far as I know, taking slaves.

Under the principle of conservation of rights, the President could not grant any more authority than he himself possessed under law. But that's an interesting side issue.

If indeed the Adminstrator of the CPA "reports to" the Secretary of Defense, this suggests a principle-agent or employment relationship rather than a property relationhip (the owner of one property does not "report to" another). So that rules out a true private franchise (or, as Paul Krugman crudely and naively puts it in today's New York Times, a "private fiefdom") as a theory. Thus it wasn't as independent as the typical British colonial corporation. That doesn't rule out some other kind of contracting relationship, however, or just a DoD internal hierarchy, either of which could be at least as or more corrupt than a so-called "fiefdom." There was never any such legal entity as a "fiefdom," by the way -- the term is a figment of non-legal historians' imaginations and of uncritical readers of history like Paul Krugman.

Of course the Brits, still playing Empire, chimed in to say that they, too, helped set up the CPA in this letter to the United Nations:

In order to meet these objectives and obligations [disarming Iraq and providing for the

Blog Archive

- ► 2018 (1)
- ► 2017 (3)
- ► 2016 (4)
- ► 2015 (3)
- ► 2014 (3)
- ► 2013 (3)
- ► 2012 (8)
- ► 2011 (12)
- ► 2010 (9)
- ► 2009 (29)
- ► 2008 (55)
- ► 2007 (47)
- ▼ 2006 (130)
  - ► December (4)
  - ► November (7)
  - ► October (15)
  - ► September (15)
  - ▼ August (20)
    - Drinking and lawyering don't mix
    - How to become a dictator in a democracy
    - Why the housing inflation?
    - "Do you think government is too big, too powerful?...
    - Pollution reduction with cap & trade
    - Colliding galaxy clusters show dark matter
    - Patents: the coming obviousness showdown
    - Colonialism just ain't what it used to be
    - What was the Coalition Provisional Authority?
    - A disturbing new beast
    - Conservation of rights
    - Limits on the income tax
    - From parody to politics

humanitarian needs of Iraqis] in the post-conflict period in Iraq, the United States, the United Kingdom and Coalition partners, acting under existing command and control arrangements through the Commander of Coalition Forces, have created the Coalition Provisional Authority, which includes the Office of Reconstruction and Humanitarian Assistance, to exercise powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction.

The CPA's status was also a matter of PR:

> Billing itself as an international coalition, while eschewing the label "federal agency," might be construed as an effort to make the organization more palatable, at least symbolically, to Iraqis and others. For example, the CPA website address ended ".com" and the PMO website ended ".net." United States government website addresses typically end ".gov." Furthermore, the Iraqi flag is the only flag that appeared on the two websites. No flags from coalition countries were displayed.

Of course Congress' biggest concern of is

> Further compounding the problem, oversight initiatives might have been met with theresponse that the activity in question was carried out under an authority over which the oversight body — Congress — had no jurisdiction.

Shades of Parliament declaring oversight authority over the American Colonies? (That was the main legal issue of the American Revolution, I hope my U.S. readers recall). It's better than the leading alternatives of unaccountable Presidential authority or United Nations authority, I suppose. And unlike Parliament's claim it is presumably like the CPA a temporary one.

The Congressional report concludes that "[t]he status of this organization remains open to question." It suggests that the CPA has a "capacity as an entity of the United State government" but that it also had "other roles." That means that the CPA was able to operate with more flexibility and less accountability: "[p]ossibly, the mix of arrangements allowed CPA to operate with greater discretion and more authority, and have access to more resources, than if it had been solely a federal agency, or an arm of the United Nations."

> Available information about the authority found in materials produced by the Administration alternatively (1) denies that it was a federal agency; (2) states that it was a U.S. government entity or instrumentality; (3) suggests that it was enacted under United Nations Security Council Resolution 1483; (4) refers to it, and OHRA, as "civilian groups ... reporting to the Secretary [of Defense]";143 (5) states that it was created by the United States and United Kingdom; and

Psychological pricing and mental transaction costs...
The return of human uniqueness?
Smart contracts, tying, and product liability
Finding jammers in a DC network
Book consciousness
Charters and judicial review
Smart contracts in pieces
► July (5)
► June (10)
► May (4)
► April (3)
► March (11)
► February (10)
► January (26)
► 2005 (44)

> (6) asserts that it was established by the then-Commander of CENTCOM. Without a clear, unambiguous statement that declares the CPA's organizational status, clarifies what its relationship was with DOD and other federal agencies, and addresses the competing explanations for how it was created, various questions are left unanswered, including whether, and to what extent, CPA might be held accountable for its programs, activities, decisions, and expenditures.

I couldn't agree more. But I'd add the following: bureaucratic hierarchy is not the be-all and end-all of government, nor is Congressional oversight, especially when the people being governed (here the Iraqis) are not voting for said Congress. (No taxation without representation, remember?) Just as the printing press era led to substantial reorganization and the rise of bureacracy, so the era of Internet consciousness and asymmetric warfare may lead to the rise of new, and the recreation of the best of old, alternatives to a command-and-control bureaucracy for basic governmental functions. Franchise government -- the colonial corporation and its subsets -- probably has a valuable role to play if we insist on conducting "democracy building" operations overseas. The crude recapiulation of this form (alas, sans most of the legal protections that historically accompanied it) in the form of the CPA and its contractors suggests that the franchise form is indeed re-emerging.

Democracy spread to America, not in the form of a central government bureacracy, and certainly not in the form of a military authority, but in the form of colonial companies whose charters preserved for residents our "English liberties." If we use franchises, however, we need to use them openly, and we need to revive the limitations we imposed on them -- especially the ability of victims of their abuses to sue in royal courts (for the U.S. that would be federal courts), especially for violations of the kinds of procedural rights now found in the U.S. Bill of Rights and the international Geneva Conventions regarding war.

Meanwhile, we should have no secret charters. How much freedom would we have under the U.S. Constitution if it were secret? How well would our "English liberties" have been preserved in the American colonies, and the institutions of democracy developed, if our charters had been secret? How accountable would such a government be? NPSD 24 should be declassified immediately, and no secret charter should be considered to have any legal authority by any government official or any other citizen any time in the future.

Posted by Nick Szabo at 7:57 PM

1 comment:

andrewc said...

It is unfortunate that a judge let Custer Battles off the hook. But the bad guys don't always get away. The average American would be shocked to learn two things. First, under a federal law, if they are aware of fraud against the federal government, they can personally file a claim to recover triple the amount defrauded, and they typically get to keep 30% of the money as a reward. Second, many of America's largest companies, from Shell Oil to Walmart, have been successfully sued by private citizens, and force to settle for sums as high as $900 Million. To learn about the law, and every major case of this type in the past 10 years, anyone can go to www.federalfraud.com

1:46 PM

Post a Comment

Subscribe to: Post Comments (Atom)

Simple theme. Powered by Blogger.